IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE JURISDICTION

CRIMINAL APPEAL NO.281 OF 1998

Motiram Dadu Waghmare (deceased)
through his son Rejendra Motiram
Waghmare, r/w Bldg.No.57,R.No.1,
Subhash Nagar, Chembur, Bombay-71 .. Appellant.

V/s

The State of Maharashtra .. Respondent.

Mr. K.S. Patil, Advocate for the appellant.

Mr. D.P.Adsule, APP for the State.

CORAM : J.H. BHATIA, J.

DATE : 22ND JUNE, 2007.

ORAL JUDGMENT.

. The original accused has preferred this appeal challenging the order of conviction for the offence punishable under section 161 of Indian Penal code and under section 5(1)(d) r/w section 5(2) of the Prevention of Corruption Act, 1947 by the Special Judge, Greater Bombay in Special Case No.54/1990. He was sentenced to undergo R.I. for six months and to pay fine of Rs. 1000/- on first count and to undergo R.I. for one year and to pay fine of Rs.1,000/- on the second count.

2. The prosecution case, in brief, is that P.W. 1

Nilkanth Pandurang Kudalkar, who is the complainant in the matter, was the owner of Maxwell Industries situated at Kurla, Mumbai. In the month of April 1988 he received a notice dated 22/4/1988 from Sales Tax Department to attend the said office on the allegations that he was defaulter in submitting his returns i.e. assessment for the year 1986-87. As per that notice he went to the office but as the then Sales Tax Officer Mr. P.G. Patil was under orders of transfer, P.W.1 Nilkanth was asked to come after the successor of Mr. P.G.Patil, would take over the charge. he was given appointment on 8/7/1988 with the present accused, who had taken over the charge as Sales Tax Officer. When the complainant met the accused, on perusal of the record the accused asked the complaint to pay him Rs.500/- to clear his file. However, the complainant was not willing to pay and he asked what would happen if he would not make the payment. On this, accused told him that if he would not pay him Rs.500/-, a fine of Rs. 4000/- to Rs. 5000/- could be imposed. Thereafter, some negotiations took place and the accused agreed to reduce the amount and demanded Rs.200/- from the complainant. He asked the complainant to come to his house preferably after 11 A.M. on next Sunday and he assured that if the payment

is made by that time, he would clear his file on 15/7/1988. The accused also wrote his address on a chit and prepared the sketch of the route to his house on the reverse of that chit. He handed over that chit to the complainant. According to the prosecution, on the same day the complainant first went to the ACB office, Ballard Pier, where he came to know that Navi Mumbai area was within the jurisdiction of Anti Corruption Bureau, Thane. On the next day i.e. 9/7/1988 he approached the ACB Office, Thane and lodged a report, which was reduced to writing by Police Inspector Jadhav. P.I. Jadhav called two panch witnesses and informed them about the complaint of complainant. Thereafter he explained the procedure of the trap. The effect of anthracene powder was also demonstrated. The complainant was having amount of Rs. 223.05, handkerchief etc. Out of these, two currency notes of denomination of Rs.100/- were kept aside and remaining property was given back to the complainant. On these two currency notes of Rs.100/- each anthracene power was applied and the said notes were kept in the left side shirt pocket of the complainant by Police Head Constable Dixit. The complainant was instructed not to touch the said notes unless the accused would make a demand of the

same. Out of the two panch witnesses, P.W. 2 Chavan was asked to accompany the complainant, while the second panch was to be with the police party. About all this, the pre-trap panchanama Exh.22 came to be recorded and the raiding party along with complainant and panchas went towards the house of the accused. They went upto Ambedkar Statue at Chembur by vehicle and then they walked towards the house of the accused. As per the plan, the complainant and P.W.2 Chavan went ahead to the house of the accused, while other members of the raiding party remained at some distance in the same vicinity. When the complainant and P.W.2 Chavan went to the house of the accused, the accused himself opened the door. Both these witnesses entered into the house and sat there. Within a view minutes, one K. Narayanan along with other persons came to meet the accused. Shortly, they went back. After that accused asked the complainant to come inside the kitchen and to see the stains of the colours on the tiles. He wanted those stains to be removed. The complainant assured him that the job would be done by P.W.2 Chavan, who was introduced as a labourer working in the factory of the complainant. After that, the complainant asked the accused what about his work, and at that time the

accused asked him whether he had brought as it was decided before. The complainant replied that he had brought. On this, the accused told him that if he had brought then he should give it to him. After this, the complainant took out the two tainted notes from the left side of his shirt pocket with his right hand and handed over the same to the accused, who accepted the same with the left hand and put it in the left side of shirt pocket.

3. After the accused accepted the amount, as per the instructions the complainant gave signal to the other members of raiding party and immediately Police Inspector Jadhav and other members of raiding party came to the house of the accused. P.I. Jadhav disclosed his identify and the purpose of raid. The complainant told P.I. Jadhav as to what had happened. Therefore, firstly the right hand of the accused was examined under ultra violate rays and there was bluish glow indicating the presence of anthracene powder on his phalanges of fingers and thumb of the right hand. Antharacene was found on the opening of the left side chest pocket of the shirt of the accused. Thereafter the accused was asked to produce the amount which he did and another

panch was then asked to take the amount in his hand. The said currency notes tallied with the description of the notes recorded in the pre-trap panchanama. The anthracene powder was also detected on those notes in UV rays. Anthracene powder was also detected in inner portion of the left side shirt of the accused. After that the complainant was also examined and similarly anthracene powder was detected on the fingers and thumb of the right hand, as well as on the inner portion and opening of the left side shirt pocket. About all these proceedings a detailed post-trap panchanama Exh.23 came to be recorded. The house of the accused was also searched and the police took charge of the files pertaining to Maxwell Industries. On the same day i.e. 10/7/1988, P.I. Jadhav lodged his FIR with Chembur Police Station and Crime No. 255/1988 came to be registered against the accused on the basis of that FIR. The case was investigated by different officers from time to time . The Government of Maharashtra accorded sanction for the prosecution of the accused, who was a gazetted officer. Thereafter the charge-sheet came to be filed against the accused.

4. On behalf of the prosecution in all six

witnesses were examined. They included P.W.1 Nilkanth Kudalkar, P.W. 2 Bansi Singh Chavan, and P.W. 6 P.I Jadhav. These three witnesses are about the main incident. P.W.4 Asha Shete was the Deputy Secretary in the Finance Department, Government of Maharashtra. She was examined to prove the sanction accorded by the Government of Maharashtra, vide Ehx.33. The defence of the accused was that he was falsely implicated because of the animosity, but he did not examine any witness in support of his contention. After hearing both sides, the learned Special Judge, convicted the accused on both the counts and sentenced him as stated earlier.

5. At the out set, it may be stated that the accused-appellant expired during the pendency of this appeal, however, the appeal was continued by his legal heir and son Rajendra.

6. Heard Mr.Patil, learned Counsel for the appellant and Mr. Adsule, learned APP. Perused the record and proceeding of the trial Court.

7. P.W.1 Nilkanth Kudalkar, who is the complainant and owner of Maxwell Industries, deposed at length about

the prosecutions case and certain documents in support of his evidence were also produced on record. P.W.1 Nilkanth Kudalkar deposed that he had received a notice that he was defaulter about submitting returns for assessment year 1986-87. It is the case of P.W.1 Nilkanth Kudalkar that in view of this notice, he went to the Sale Tax office, where Mr. P.G.Patil was the Sales Tax Officer but as P.G. Patil was under the orders of transfer, the complainant was asked to meet his successor. Later on he was informed that accused-appellant Motiram Waghmare had taken over the charge of Sales Tax Officer in place of P.G.Patil. He deposed that a Clerk in that office gave him appointment on 8/7/1988 to meet the accused and accordingly he met the accused, who made the demand of Rs. 500/- and after some negotiations he came down to Rs.200/-. He also deposed that on demand of Rs.500/-, he had asked the accused as to what would happen, if he would not make the payment and on this, accused replied that in case of non payment of Rs.500/- to him, a fine of Rs.4000/- to Rs.5000/- would be imposed. P.W. 1 Nilkanth deposed about the approach to the Anti Corruption Bureau and his complaint, as well as what had happened at the time of trap at the house of the accused. His evidence is fully

corroborated by the testimony of P.W. 2 Bansi Singh Chavan, who was a panch witness. Evidence of these two witnesses clearly reveals that at the time of trap, after showing the stains on the tiles in the kitchen, the accused asked the complainant for removal of those stains and as the complainant had introduced P.W. 2 Bansi Singh Chavan as a labourer, working in his factory, P.W.1 told the accused that P.W.2 Bansi Singh Chavan would do the work. After this talk, the complainant asked the accused about his own work and the evidence shows that the accused asked the complainant as to whether he had brought and that the complainant replied that he had brought. On this, accused told him that if he had brought, then he should give it to him. On this, the complainant took out the amount of Rs. 200/- from left side shirt pocket and handed over to the accused, which he accepted in his right hand and then put in the left side chest pocket of his shirt. Thereafter, the complainant went out and as per the instructions he gave signal to the members of the raiding party and immediately remaining members of the raiding party including P.W. 6 P.I. Jadhav, came there.

8. Evidence of P.I. Jadhav, as well as P.W.2 Bansi Singh Chavan clearly shows that during the personal inspection of the accused anthracene powder was detected on the finger and thumb of his right hand, as well as opening of the pocket of his shirt.Thereafter accused was asked to take out the amount which he had taken and the accused produced the said amount consisting of two currency notes of Rs. 100/- each. Those two notes were also examined and anthracene powder was detected on those notes. The description of those notes tallied with the description recorded in the pre-trap panchanama. In the inner side portion of the pocket of the shirt of the accused also anthracene powder was detected. Similarly, the complainant was examined and anthracene powder was detected on his right hand as well as inside the pocket of his shirt. About this proceedings the panchanama Exh.23 was prepared.

9. Though, all these witnesses were cross-examined at length, no material discrepancy or contradiction could be brought on record. These witnesses could not be shattered at all. It was the defence of the accused that he had called complainant just to show his house for removal of the stains on the tiles. He also

contended that he was falsely implicated because of animosity. If there was any enmity between the complainant and the accused, there could be no reason for the accused to invite the complainant to his house to help him in removal of the stains on the tiles in the kitchen. This could be possible only if relations were cordial. On the other hand, it is the contention and evidence of the complainant that he went to the house of the accused to pay the bribe amount as per the demand and at that time the accused showed him the kitchen and therefore, there was a talk about removal of the stains. There was no reason either for the complainant or for P.W. 2 Chavan or P.I Jadhav to falsely implicate the accused. Taking into consideration the evidence on record, I find that the prosecution has proved beyond reasonable doubt that the accused had demanded and accepted the amount of Rs. 200/- for clearance of his assessment file for the assessment year 1986-87, which was the official duty of the accused. This was certainly a bribe or illegal gratification and acceptance of illegal gratification for doing official work amounts misconduct on his part. Therefore, in my opinion, the prosecution had successfully proved both the charges levelled against the accused.

10. It may be noted that P.W. 4 Asha Shete, Deputy Secretary, finance Department of the Government of Maharasthra, proved that the accused being a Sales Tax Officer, was a Gazetted Officer. He could be appointed or removed from the service by the Government of Maharashtra and therefore, after receipt of the proposal for his prosecution, the matter was thoroughly studied and a note was put up before the Chief Minister and the Chief Minister accorded sanction for prosecution by putting his signature on the office file. On the basis of that, as per business rules, P.W. 4 Asha Shete issued sanction order Exh.33 under her signature. It is material to note that she was not cross-examined and as such sanction was not challenged during the trial

11. Taking into consideration the whole of the evidence on record, I find that the impugned order of conviction and sentence does not suffer from any infirmity, illegality or mistake and needs no interference.

12. In the result, the appeal stands dismissed.

(J.H. BHATIA, J.)